

REMARKS

Claims 1-27 were pending prior to this amendment. These claims were asserted to be lacking Unity of Invention. While the Applicants believe that the Examiner was mistaken as a matter of law as to her analysis of Unity of Invention, in the interest of time, Applicants offer the above amendment in hopes of progressing prosecution of this case. Thus, claims 1-27 have been cancelled, and claims 28-39 are newly presented herein.

Applicants respectfully wish to make of record their contention of the Examiner's application of Unity of Invention standards. Under Unity of Invention, the claims must be taken as a whole. Both novelty and obviousness is taken into consideration.

The subject matter originally claimed, and claimed in this amendment, is distinguished from the compounds described in WO 02/26723. WO 02/26723 does not anticipate the subject matter claimed in this amendment nor in the claims as presented prior to this amendment. Further, WO 02/26723 is prior art only under §102(e); the reference cannot be considered in an obviousness analysis under §103(c)(1), due to common ownership of the cases. The Markush group claimed is both novel and non-obvious over this reference.

The standard employed in the 2nd full paragraph of pages 4 through the end of the paragraph that carries onto page 5 of the Office Action is inapplicable to the claims as presented. The standard employed is only appropriate where the common structure makes up *only a small portion of the structure* of the Markush grouping, and is inappropriate in this case. The Examiner's attention is directed to MPEP 1850 II B concerning Markush practice, and particularly to Chapter 10 of the WIPO PCT International Search and Preliminary Examination Guidelines, dated March 25, 2004, and to the descriptions provided in Examples 18, 19, 20, and 21.

Moreover, Applicants respectfully take exception to the Examiner's position concerning different categories of invention. Unity of Invention may still exist under Markush practice. The Markush genus defines "the product", which is still appropriately considered with other categories of invention, such as a process for preparing that product, or methods of using that product, or intermediates to that product. The Examiner's attention is directed to Chapter 10 of the WIPO PCT International Search and Preliminary Examination Guidelines, dated March 25, 2004, and to the descriptions provided in Examples 1, 4, 15, and 16.

According to MPEP 1850, III B, a Markush grouping complies with Unity of Invention when each of its members are of a similar nature. This occurs under PCT Rule 13.2, when, as here, all the alternatives have a common property or activity and a common structure is present. In this case, the claimed compounds are CCR3 antagonists, as explained in the specification. Moreover, these compounds all share a common chemical structure (for the claims presented in this amendment, the core structure of the compound (If)). This common structure occupies a *large portion* of their structure. Moreover, the common structure is included within an asserted recognized class making up CCR3 antagonists. The Examiner will note that the common structure may be "a single component or a combination of individual components linked together".

In light of the above, Applicants respectfully assert that Unity of Invention has been complied with. Favorable consideration of this suggested amended set of claims is requested.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge any fees or to credit any overpayment, particularly including any fees required under 37 CFR §1.16 or 1.17, and any necessary extension of time fees, to Deposit Account No. 07-1392.

Respectfully submitted:

30 September 2008
Dated: _____

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